

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ON THE INTERSTATE TRADING OF
EMISSION REDUCTION CREDITS**

1-1998

WHEREAS, the prevention and control of air pollution in New England is primarily the responsibility of the States within that region; and

WHEREAS, the control of air pollution results in substantial social and economic gains through benefit to human health and the environment, and through the avoidance of detrimental effects on crops, forests, materials, and other natural resources; and

WHEREAS, the State of Maine and the Commonwealth of Massachusetts share common social, economic, and environmental concerns; and

WHEREAS, Interstate emissions trading offers the potential for enhancing the economic vitality of the region by providing emission sources flexibility for meeting emission reduction requirements and by reducing the cost of achieving pollutant reductions; and

WHEREAS, to ensure the availability of offsets for New Source Review pursuant to the Clean Air Act, it is desirable for new and existing emission sources to have access to a ready supply of emission reductions credits (ERCs); and

WHEREAS, Massachusetts Department of Environmental Protection (MADEP), an Executive Agency of the Commonwealth of Massachusetts, pursuant to Massachusetts General Laws, chapter 111, sections 142A-142M is authorized to implement the provisions of the federal Clean Air Act in the Commonwealth of Massachusetts; and

WHEREAS, MADEP has established and implemented the Emissions Banking and Trading Regulation at 310 CMR 7.00: Appendix B, under which reductions of NOx, VOC, and CO are certified as ERCs; and

WHEREAS, MADEP's Rate ERC bank will hold ERCs from the shutdown, prospective curtailment, or over control of emissions sources; and an ERC represents a continuous rate of emission reduction; and the value of the ERC in the Rate ERC bank is measured in tons per year, and ERCs may be used as emission offsets in accordance with Chapter 113 of the Maine Department of Environmental Protection's Regulations; and

WHEREAS, pursuant to 310 CMR 7.00 Appendix B, ERCs generated in the Commonwealth of Massachusetts may be obtained through trading by another state which has negotiated and executed a Memorandum of Understanding with the Commonwealth of Massachusetts for the trading of emission credits; and

WHEREAS, the State of Maine and the Commonwealth of Massachusetts both consider their periods of peak ozone formation (i.e., "ozone seasons") to begin on May 1 and end on September 30 of each year; and

WHEREAS, The Maine Department of Environmental Protection (MEDEP), an Executive Agency of the State of Maine, pursuant to Maine Statutes M.R.S.A Title 38, 585 and 585-A, is authorized to implement the provisions of the federal Clean Air Act in the State of Maine; and

WHEREAS, all ERCs shall be based only on emissions reductions that are real, permanent, surplus, properly quantified, and enforceable pursuant to the requirements of a statute, rule, permit, or order; and

WHEREAS, ERCs used to meet federal New Source Review requirements are considered to last for the life of the unit requiring the offsets.

NOW, THEREFORE, it is hereby resolved by the Commissioner of the MEDEP and the Commissioner of the MADEP that:

1. MADEP and MEDEP intend, through the execution of this MOU, to establish conditions for NOx ERC trading between the Commonwealth of Massachusetts, and the State of Maine; and
2. NOx ERCs generated in the Commonwealth of Massachusetts may be used in the State of Maine to meet the emission offset requirements set forth in Maine's Offset Trading Regulation, Chapter 113 of the Maine Department of Environmental Protection's regulations; and
3. However, in accordance with the geographic constraints on trading set forth in the federal Clean Air Act, no ERCs generated in the State of Maine may be used in the Commonwealth of Massachusetts, and
4. Use in the State of Maine of NOx ERCs generated in the Commonwealth of Massachusetts shall be governed by the conditions of this MOU and by Maine's Offset Trading Regulation, Chapter 113 of the Maine Department of Environmental Protection's regulations; and
5. The portion of the credits to be used during the ozone season must be generated primarily during the ozone season; and

6. To promote consistency in the quantification of emission reductions, including methods for accounting for measurement uncertainties, the two States shall work together, in conjunction with the other members of the Ozone Transport Commission, toward developing common quantification principles, addressing such questions as how to account for the measurement or other technical uncertainties and a common set of quantification protocols; and

7. Final determinations on the ability of sources in the State of Maine to use specific NOx ERCs to comply with applicable state air quality regulatory requirements shall be the responsibility of the MEDEP; and

8. To ensure the continued environmental integrity of any emissions trading conducted pursuant to this MOU, MADEP shall strictly enforce the conditions of any permit, order, or rule pursuant to which emission credits are generated, and MEDEP shall strictly enforce its State's emission requirements, as modified by any valid use of ERCs. Each State agrees to fully exercise its authorities to these ends; and

9. Enforcement shall be aided by close cooperation between the two States. Therefore, upon request of the other State, both States shall share all relevant information in the control of the respective Department concerning the generator and user sources and the ERC generation and use including, but not limited to, emission limitations and permits issued, and any and all documentation relating to generation and use of the emission credits; and

10. Upon the request of the MEDEP, the MADEP shall submit to MEDEP a report of all ERCs that have been transferred from the Commonwealth of Massachusetts during a given time period; and, MEDEP shall submit to MADEP a notice of any ERCs generated in the Commonwealth of Massachusetts that have been used in Maine to meet the requirements of New Source Review. Such reports shall be based on the information maintained in the records in the possession respectively of the MEDEP and the MADEP; and

11. Each State agrees to provide to the other State copies of any trading program audits performed pursuant to its own rules, or to EPA's Economic Incentive Program rule at 40 CFR Part 51 which requires that emission trading programs be audited at least every three years.

12. Nothing in this MOU shall be construed to compel either the MADEP or the MEDEP to produce information or documents which the other agency deems confidential or privileged. The MADEP and the MEDEP further acknowledge and understand that the right of access by the public to information under applicable state law is not affected by this MOU; and

13. Any changes in emissions that occur in the State of Maine as a result of use of emission credits based on emission reductions in the Commonwealth of Massachusetts shall be accounted for by the Maine DEP in its periodic emission inventories and respective compliance milestone demonstrations.

14. This MOU shall not pertain to allowance trading conducted under the auspices of the NOx Budget Program, currently being developed by States in the Ozone Transport Region pursuant to the "Memorandum of Understanding Among the States of the Ozone Transport Commission on Development of A Regional Strategy Concerning the Control of Stationary Source Nitrogen Oxide Emissions," signed on September 27, 1994; and

15. Should the States that are signatories to this MOU agree at a future time to enter into an interstate emissions trading agreement with a larger number of States, that future agreement shall supersede this MOU; and

16. For matters pertaining to the Interpretation or Implementation of this MOU, the contact person at MADEP is:

Diane Langley, Senior Counsel
Massachusetts Department of Environmental Protection
Office of General Counsel
One Winter Street
Boston, Massachusetts 02108
Telephone (617) 292-5712

And the contact person at MEDEP is:

James Brooks
Maine Department of Environmental Protection
Bureau of Air Quality
17 State House Station
Augusta, ME 04333
Telephone (207) 287-2437

17. Nothing in this MOU shall affect the rights, duties, and authority of either the MADEP or the MEDEP under the law. The MADEP and the MEDEP reserve their authority and rights to take any enforcement action which they deem necessary to fulfill their duties and responsibilities under the law; and

18. This MOU sets forth the entire understanding between the MADEP and the MEDEP on this subject and is not intended to and does not create any contractual rights or obligations with respect to the signatory agencies or any other parties. The MADEP and the MEDEP acknowledge and understand that the MOU may only be modified in writing as an amendment to this MOU or superseded pursuant to paragraph 15 above. In addition, upon written notice to the other state, either state may terminate this MOU.

The MADEP and the MEDEP hereby acknowledge the foregoing as the terms and conditions of their understanding:

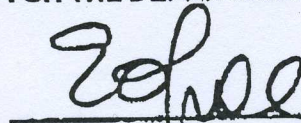
FOR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE COMMONWEALTH OF MASSACHUSETTS,



David B. Struhs,
Commissioner
Massachusetts DEP

8/11/98
date

FOR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF MAINE,



Edward O. Sullivan,
Commissioner
Maine DEP

6/24/98
date

